SUPREME COURT OF FLORIDA
JULY TERM 1975

No. 47,330
District Court of Appeal, Third District, No. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Petitioner,
v.

MARILYN FERNANDEZ, ETC. ET AL., Respondents.

Opinion filed Thursday, October 30, 1975

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C. J., ROBERTS, OVERTON, ENGLAND AND SUNDBERG, JJ CONCUR

A True Copy

TEST

Sid J. White
Clerk Supreme Court

Frances Owen Warriner, in proper person for Petitioner.

Bolles, Goodwin, Ryscamp & Welcher; and Weinsoff & Weinsoff, for Respondents.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, 1976
WEDNESDAY, JANUARY 28, 1976

** CASE NO. 47,330
** DCA 3 No. 74-137
** Circuit Court in and for
Monroe County, No. 73-116

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Petitioner,
v.

MARILYN FERNANDEZ, ETC., ET AL., Respondents.

On consideration of the Petition for Rehearing, etc., filed by petitioner,

IT IS ORDERED that said petition is denied.

ADKINS., C. J., ROBERTS, OVERTON, ENGLAND AND SUNDBERG, JJ., CONCUR

A True Copy

TEST:

/s/ Sid J. White

Sid J. White
Clerk Supreme Court.

Frances Owen Warriner, in proper person for Petitioner.

Bolles, Goodwin, Ryscamp & Welcher; and Weinsoff & Weinsoff, for Respondents.

BLEED THROUGH

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1975

No. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Appellant.

v.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as Marilyn Kay Thal, etc., et al., Appellees.

Opinion filed February 25, 1975

An Appeal from the Circuit Court for Monroe County, Bill G. Chappell, Judge.

Frances Owen Warriner, in proper person.

Weinsoff & Weinsoff; Bolles, Goodwin, Ryscamp & Welcher; Paul Revere Berglund, for appellee.

Before PEARSON, HAVERFIELD and NATHAN, JJ.

PER CURIAM.

This is an appeal by the Plaintiff, Frances Owen Warriner, from two orders of the circuit court of Monroe County, the first granting the defendants' motion to dismiss with prejudice, ordering that the defendants recover from the plaintiff their costs and directing the clerk of the circuit court of Monroe County to remove, delete and

expunge from the public records of such county "those instruments filed for record by the plaintiff herein, if any, which interfere with the possession, title, use or disposal of the real property subject herein" The second is an order denying the plaintiff's petition for rehearing.

We are cognizant of the numerous previous lawsuits concerning the identical parcel of property herein involved; that the appellant, Frances Owen Warriner, was a party to each and every one of those previous lawsuits and that the matter has reached final disposition on those multiple occasions.[1]

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[1]. . . "Fink v. Warriner, Case No. 12516 filed in Monroe County, Florida on October 26, 1950, in her efforts to overturn or modify the adverse decision entered against her in the last mentioned case, as follows:

. . . Frances O. Warriner vs. Harry Fink, Circuit Court of Monroe County, Florida, Case No. 12-1172, Case entitled 'Original Bill in the Nature of a Bill of Review'. This action was dismissed by the Supreme Court of Florida in 1953, 62 So.2d. 913.

. . . Frances O. Warriner vs. Harry Fink, Circuit Court of Monroe County, Florida, Case No. 14-1187, Case entitled 'Original Bill in the Nature of a Bill of Review'. This Complaint was dismissed March 5, 1958. An Appeal was taken to the Third District Court of Appeal and the appeal was quashed on October 21, 1958. Rehearing was denied April 20, 1959. The Order of the Third District Court of Appeal was taken to the Supreme Court of Florida as Case No. 23395 and was dismissed by the Supreme Court of Florida on October 7, 1959.

. . . Frances O. Warriner v. Harry Fink, et al., District Court for the Southern District of Florida, Case No. 10-395, seeking to upset the decree entered in Case No. 12516, which is the initial case referred to in paragraph 1 hereof. This action was dismissed by the United States District Court on February 28, 1961. An appeal was taken to the United States Court of Appeals and the Order of dismissal was affirmed and is reported in 307 F.2d 933. Certiorari denied by the Supreme Court of the United States, 372 U.S. 943.

BLEED THROUGH

We are of the opinion, therefore, that the appellant is prevented from pursuing the instant litigation because of estoppel by judgment. Affirmed on the authority of McGregor v. Provident Trust Co., of Philadelphia 1935, 119 Fla. 718, 162 So. 323; School Board of Flagler County v. Hauser, Fla. 1974, 293 So. 2d. 681.

Affirmed.

. . . Frances O. Warriner vs. Harry Fink, United States District Court for the Southern District of Florida, Case No. 63-611. This action was dismissed by the United States District Court in March 1964.

. . . Marilyn Fernandez v. Frances O. Warriner, Circuit Court of Monroe County, Florida. This was an action filed against the Plaintiff, Frances O. Warriner, and was a bill to remove a cloud on title and for an injunction. Frances O. Warriner filed a counterclaim predicated upon basically the same charges as above outlines. A final Order quieting the title of Marilyn Fernandez and dismissing Warriner's counterclaim was entered May 19, 1967. This Order was appealed in the Third District Court of Appeal and affirmed on May 21, 1968, 213 So.2d 328, Petition for Rehearing denied August 22, 1968, Petition for certiorari was denied by the Supreme Court of Florida, in March 1969, rehearing denied May 2, 1969, 225 So.2d 524. A Petition for certiorari was filed in the Supreme Court of the United States on October 17, 1969, and this Petition for certiorari was denied by the Supreme Court of the United States on January 17, 1970. Rehearing was denied on March 23, 1970 . . .

This very Order . . . is predicate for the dismissal of the Plaintiff's Amended Complaint. "Memorandum of cases filed by counsel for the appellee.

(This case was reported, Florida Appeal, 1975, in 310 So.2d 375.)

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1975
TUESDAY, APRIL 22, 1975

NO. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Appellant,
v.

MARILYN FERNANDEZ, an alleged free dealer,
formerly known as MARILYN KAY THAL,
etc., et al., Appellees.

Appellant in proper person, having filed in this cause a petition for rehearing, and the same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

/s/ WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District

cc: Frances O. Warriner
Weinsoff & Weinsoff
Bolles, Goodwin, Ryscamp & Welcher
Paul R. Berglund

BLEED THROUGH

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY GENERAL JURISDICTION DIVISION

No. 73-116

FRANCES OWEN WARRINER, a/k/a FRANCES O. WARRINER, Plaintiff,

v.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, etc., et al, Defendants.

Order, filed November 21, 1973

Key West, Florida

Before Honorable Bill G. Chappell, Judge, of the above entitled court, at the Monroe County Courthouse, Key West, Florida.

Frances Owen Warriner, in proper person, for Plaintiff.

Irving Weinsoff; and Paul R. Berglund, for Defendants.

ORDER

Motions of Defendants, MORRIS FOX and JEAN FOX and TITLE GUARANTY COMPANY OF BALTIMORE, MARYLAND, to dismiss and an application by the

Defendants, MARILYN FERNANDEZ and MARIO FERNANDEZ, that the plaintiff, FRANCES O. WARRINER, be held in Contempt, and praying for an Order dismissing the above-entitled action, having duly come on to be heard before me and after hearing argument thereon, and upon examining and considering the files and records of this cause along with those of prior causes at the request of the Plaintiff, the Court finds that a permanent injunction was entered by the Honorable Marshall C. Wiseheart, Judge of this Court on May 9, 1967 in case 1-93, enjoining and restraining the Plaintiff herein from filing and/or recording any deed, claim, interest, right or demand against the subject property herein or from in any way interfering with Defendant, MARILYN FERNANDEZ in her possession, title, use or disposal of subject property; that said injunction and other issues were left undisturbed on appeal; that said injunction is still in full force and effect; that Plaintiff has failed to comply with this injuncton and is in violation of same by filing this action, that in said case number 1-93 the Defendant, MARILYN FERNANDEZ, was declared to be the legal and record title owner of subject property herein; that the Plaintiff herein has alleged in actions prior hereto both her claims of Fraud upon the Court and denial of due process of law, although she has advised this Court that she was unaware of facts supporting such allegations prior to this action; that judgments and/or decrees sought to be vacated and set aside herein have been affirmed by appellate courts and absent leave of said Courts, this Court is without jurisdiction; that the Court has been very lenient and considerate with Plaintiff, making great allowances for the fact that she represents herself without benefit of counsel, but the general allegations and insinuations contained in the papers filed herein and in oral statements certainly border upon

BLEED THROUGH

criminal contempt and the Court hereby advises Plaintiff accordingly; that the Plaintiff has failed to show the existence of adequate grounds to justify the exercise of that discretionary power granted the Court under RCP 1.540 (b) to entertain an independent action for relief based upon fraud on the Court; and

Therefore, upon the aforesaid Motions by Defendants, or upon Motion by the Court, sua sponte, and the Court being otherwise informed in the premises, it is,

ORDERED AND ADJUDGED:

1. That the above-entitled action be, and the same is hereby dismissed with prejudice, and that Defendants recover of Plaintiff their costs; this Court hereby retaining jurisdiction of this cause for the sole purpose of determining the amount of said costs to be taxed herein, and to order and direct the Clerk of the Circuit Court of Monroe County of the State of Florida to remove, delete and expunge from the Public Records of Monroe County those instruments filed for record by the Plaintiff herein, if any, which interfere with the possession, title, use or disposal of the real property subject herein.

DONE AND ORDERED at Key West, Monroe County, Florida, this 21st day of November, 1973.

/s/ Bill G. Chappell

Circuit Judge

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY GENERAL JURISDICTION DIVISION JANUARY 3, 1974

No. 73-116

FRANCES OWEN WARRINER, a/k/a FRANCES O. WARRINER, Plaintiff,

v.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, etc., et al., Defendants.

Before Honorable BILL G. CHAPPELL, JUDGE, of the above entitled Court, at the Monroe County Courthouse, Key West, Florida.

Frances Owen Warriner, in proper person, for Plaintiff.

Irving Weinsoff; and Paul R. Berglund, for Defendants.

ORDER

Plaintiff's Motion for Rehearing on Defendants' Motion to Dismiss, filed by the Defendants, Morris Fox, Jean Fox and Title Guaranty Company of Baltimore, Maryland,

for which an Order was entered under date, November 21, 1973, came on to be heard this date and upon hearing argument of Plaintiff and the Court being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED that the Order dated and filed November 21, 1973, in which the above entitled action was dismissed with prejudice shall remain in full force and effect as stated therein.

That the Relief applied for in Plaintiff's Motion for Rehearing is hereby denied.

DONE and ORDERED at Key West, Monroe County, Florida, this 3rd day of January, A.D. 1974.

/s/ BILL G. CHAPPELL

Bill G. Chappell, Judge.

App. 12

RALPH W. WHITE
Clerk of the Circuit Court

Monroe County, Florida **Key West, Florida**

May 2nd, 1975

Type of Instrument	Date Filed and Docketed	Number of Pages of Instrument
Bill To Foreclose Mortgage*** with Mortgage Deed Attached	October 26, 1950	7
Notice of Lis Pendens	October 26, 1950 Recorded in Book 4 Page 93	1
Answer filed by B.R. Cisco, Attorney for Defendant	November 28, 1950	2
Summons in Chancery issued for Frances O. Warriner on October 26, 1950, served on Frances O. Warriner November 8, 1950	December 11, 1950	1
Stipulation with Copy of Final Decree of Foreclosure attached	December 29, 1950	6
Final Decree of Foreclosure signed by Judge Aquilino Lopez, Jr. on December 28th, 1950	December 29, 1950 Recorded in Book A-7 Pages 38, 39, 40, 41, 42.	5

***Mortgage was to HENRY H. HERMAN. 3144 Royal Palm Avenue, Miami Beach, Florida.

I have searched the docket and file in Case Number 12-516, Harry Fink as Plaintiff and Frances O. Warriner as Defendant and hereby certify that the above listed instruments were filed, docketed and recorded as so stated in the Office of Clerk of Circuit Court on the dates shown above. There are no other papers filed and docketed in Case Number 12-516, Harry Fink as Plaintiff and Frances O. Warriner as Defendant between the filing of the Bill To Foreclose Mortgage with Mortgage Deed attached and the Final Decree of Foreclosure signed by Judge Aquilino Lopez, Jr., except the instruments listed above. The number of pages listed are the number of pages in the instruments as indicated.

Ralph W. White,
Clerk of Circuit Court
Monroe County

By: /s/ June Holland
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 19131

FRANCES O. WARRINER, Appellant,
versus

HARRY FINK, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(September 13, 1962)

Before RIVES, JONES and GEWIN, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a judgment dismissing a complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted. The voluminous record consists mostly of legal conclusions, briefs and arguments. The complaint alone, with its exhibits, comprises ninety pages of the printed record. When the facts are ultimately distilled, however, they are comparatively simple. They can be best understood by stating them in chronological order.

On August 17, 1948, the plaintiff executed a mortgage on certain very valuable lands located in Monroe County, Florida, in the amount of $10,000.00. The mortgage was actually to Sam Kay, but was taken in the name of his brother-in-law, Morris Resnick. Kay knowingly exacted interest in excess of 25% in violation of Florida Statutes

687.07. The complaint alleges that a proper application of payments and credits would completely extinguish and discharge the debt.

On January 31, 1950, the plaintiff executed a rewritten mortgage for $10,500.00 founded upon the same debt. Kay agreed to give her $3,000.00 previously withheld and an additional $500.00, but later refused to do so. While the mortgage was rewritten by Sam Kay and he was the real party in interest, it was taken in the name of Henry H. Herman. The rewritten mortgage was without any consideration moving to plaintiff. Sam Kay was at all times the real party in interest, and Henry H. Herman, Marilyn Kay, Harry Fink and others conspired with Sam Kay to perpetrate a fraud on the plaintiff. On February 21, 1950, Herman transferred the mortgage to Marilyn Kay. On July 26, 1950, Marilyn Kay transferred it to Harry Fink. On October 26, 1960, Harry Fink filed his bill to foreclose the mortgage in the Circuit Court of Monroe County, Florida.

The plaintiff, Frances O. Warriner, employed an attorney to defend the foreclosure suit, and filed an answer admitting the residence and age of the parties but denying all other allegations. The complaint alleges:

> "That on December 22, 1950, just three days before Christmas, Cisco [Mrs. Warriner's attorney], was tricked into a stipulation with Harold Kassewitz, attorney for Harry Fink, who concocted an unauthorized stipulation, intended and calculated to deprive the plaintiff herein, of her constitutional rights, of due process of law; and which, in effect, waived all of her substantial rights, erroneously, unlawfully and

irregularly, without her knowledge, consent or approval, and was unauthorized as these attorneys then knew; and that the plaintiff herein was thus defrauded out of an opportunity to present her meritorious defense in the original action thereby, to her great damage and injury."

Attached to the complaint are affidavits of both of plaintiff's former attorneys. Attorney Cisco's affidavit reads as follows:

"In that certain cause pending in the Circuit Court of the Eleventh Judicial Circuit in and for Monroe County, Florida, in Chancery, No. 12-516, entitled 'Harry Fink, Plaintiff vs. Frances O. Warriner, Defendant,' upon request of the defendant I prepared an answer to the Bill of Complaint filed in the above entitled cause and traversed said bill placing plaintiff upon due proof to establish the allegations of said Bill of Complaint; had I known at said time that a special defense, to-wit, usury, was involved, I would have set same up in said answer.

"Thereafter, I entered into a stipulation with Harold Kassewitz, attorney for plaintiff, and at his request, wherein and whereby final decree could be entered by the Court having jurisdiction of the subject matter of the suit and that the sale of the property was to be postponed beyond the time of the due process provided under the statutes and rules of the Court.

"The sole purpose and consideration (as cited in said stipulation) for the execution of said stipulation

was to give the defendant an extension of time prior to the sale date within which to either pay the indebtedness, bid at sale or refinance her property. The record shows that no additional time beyond the statutory period was, in fact, extended to said defendant, which was not the purpose of such stipulation or the agreement between counsel.

"In addition the stipulation did not waive the necessity on the part of the plaintiff to introduce evidence to establish the debt sued upon, that is to say, the introduction into evidence and proof of the note or notes and mortgage securing same.

"I have no independent recollection, nor have I any notes or records as to whether or not the stipulation was discussed by me with Mrs. Warriner, but in any event, it would have never been executed by me except with the express understanding that a reasonable period of time was to be given to the defendant beyond the time which was allowed under the statute."

Relying upon the fraudulent stipulation, the court on December 28, 1950 entered a final decree finding Mrs. Warriner's indebtedness under the mortgage to be $11,458.40 — plus $31.85 cost of abtsarte, plus $750.00 attorney's fee, and ordering the property sold by a special master to the highest and best bidder on February 5, 1951. At that sale Harry Fink became the purchaser "for the egregiously low sum of $1,000.00." The plaintiff had been kept in ignorance of the fraudulent stipulation, the final decree and the sale.

As soon as the plaintiff learned of those events, she employed other counsel, repudiated the unauthorized stipulation, and on March 6, 1951 filed her motion to set aside the final decree and the master's sale, and requested that she be allowed to offer her defense to the bill of foreclosure. The court, on September 20, 1951, granted the motion to set aside the sale, but denied the motion to set aside the final decree, and thus deprived plaintiff of her right to defend against the bill of foreclosure. The master conducted another sale on October 15, 1951, and Harry Fink again became the purchaser, but this time "for the egregiously low sum of $5,000.00." The master filed his report of sale on October 22, 1951, and a motion for confirmation was set for hearing on November 9, 1951, but was not heard because plaintiff's then attorney, Leland Hyzer, filed a notice of appeal the preceding day.

The transcript of record was filed in the Supreme Court of Florida on January 10, 1952. Two days later Harry Fink, the appellee, filed a motion to dismiss the appeal in which he undertook to deceive the Court into ruling that the appeal was from the decree of December 28, 1950, when in reality it was from the order of September 20, 1951. Plaintiff's then attorney, Leland Hyzer, wrote a letter to the Clerk of the Supreme Court of Florida explaining that, "the notice of appeal was taken from that portion of the Circuit Court's order denying the motion to set aside the final decree," and that, "it is our position that the record has been properly filed in accordance with Rule No. 12." Nonetheless, the Supreme Court of Florida on January 23, 1952 dismissed the appeal without any consideration of the merits, but sustaining Harry Fink's motion that the transcript of the record on appeal was not filed within time.

BLEED THROUGH

The plaintiff has since litigated extensively in Florida in an effort to have her defense to the foreclosure of the mortgage heard on its merits, but always without success. She now brings the present complaint to enjoin the defendants from enforcing the final decree of foreclosure, and to attack that decree as void. No diversity of citizenship is alleged. Instead, in the complaint filed in her own proper person, the plaintiff expresses her theory of the federal court's jurisdiction as follows:

> "This action arises under the Constitution of the United States, the First, Fifth and Fourteenth Amendments, thereof, the "Taking of Property Without Due Process of Law,' and the 'Denial of Equal Protection Under the Laws of the Land,' as hereinafter more fully and particularly appears. This is a civil suit brought for the purpose of declaring null and void and enjoining the enforcement of a certain order of the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida, In Chancery, entitled 'Final Decree of Foreclosure,' entered December 28, 1950, and Recorded in Chancery Order Book A-7 at Pages 34/42, which seeks to deprive the plaintiff of her property without due process of law and denies the plaintiff the equal protection of the laws in violation of her rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and that the order is therefore illegal, null and void . . ."

The plaintiff has appeared and argued the case very creditably in her own behalf and has impressed the Court with her sincerity. It is for that reason and to enable her the more easily to petition for review of our judgment in

the Supreme Court of the United States, if she so desires, that we have set forth the facts alleged in the complaint in such detail.

The plaintiff insists that through no fault of her own she is being deprived of valuable properties without any hearing on the merits of her defense to the bill of foreclosure and thus without due process of law. Her argument is that the purported final decree of foreclosure is an absolute nullity because of fraud practiced on the court, and that a federal district court can enjoin a party from enforcement of such a void judgment under such authorities as Simon v. Southern Railway Company, 1915, 236 U.S. 115, and Johnson v. First National Bank, 10 Cir., 1955, 223 F.2d 31.

We are convinced, however, that when the plaintiff failed to seek review by the Supreme Court of the United States of the judgment of the Supreme Court of Florida of January 23, 1952 dismissing her appeal, she lost the only avenue of relief available to her in the federal courts. In the light of the anti-injunction statute, 28 U.S.C.A., §2283, and of a number of decisions of the Supreme Court and of this and other Circuits, in which the principles are fully discussed, we hold that the federal district court had no jurisdiction to enjoin the enforcement of, or to set aside, or hold null and void the decree of foreclosure entered by the Circuit Court of Monroe County, Florida. See Rooker v. Fidelity Trust Co., 1923, 263 U.S. 413; Toucey v. New York Life Ins. Co., 1941, 314 U.S. 118; Chicago Life Ins. Co. v. Cherry, 1917, 244 U.S. 25, 30; Manufacturer's Record Publishing Co. v. Lauer, 5 Cir., 1959, 268 F.2d 187; T. Smith & Son, Inc. v. Williams, 5 Cir., 1960, 275 F.2d 397, 402 et seq.; Hanna v. Home Insurance Company, 5

Cir., 1960, 281 F.2d 298; Sexton v. Barry, 6 Cir., 1956, 233 F.2d 220; numerous cases collected in Annotation 13 A.L.R. 2d, pp. 467, et seq. §23. The judgment is therefore AFFIRMED.

JONES, Circuit Judge, Concurs in the Result.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ G. F. Ganucheau
Deputy

New Orleans, Louisiana, October 8, 1962.
(Seal)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
October Term, 1961

No. 19,131

D. C. Docket No. 10,395-M-Civ.
FRANCES O. WARRINER, Appellant,
versus
HARRY FINK, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Florida.

Before RIVES, JONES and GEWIN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Frances O. Warriner, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Jones, Circuit Judge, Concurs in the Result."

September 13, 1962

Issued:

BLEED THROUGH

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA
MARCH 3, 1964

NO. 63-611 Civ-CF

FRANCES O. WARRINER, Plaintiff,
v.

HARRY FINK,ET AL., Defendants.

Before Honorable CHARLES B. FULTON, JUDGE.

Frances O. Warriner, for Plaintiff.

Sibley, Grusmark, Giblin, King & Levinson; Burnett Roth, Irving Firtel & Gilbert A. Frank, for Defendants.

ORDER OF DISMISSAL

This cause has been presented to and considered by the Court upon the Motions of the several defendants to dismiss the complaint.

The complaint alleges that in 1950, plaintiff was divested of title to realty by a judgment of the Circuit Court in and for the Eleventh Judicial Circuit of Florida, and that thereafter this judgment was affirmed by the Supreme Court of Florida.

In her instant complaint, plaintiff alleges that thereafter she filed in this Court a complaint wherein she made a collateral attack upon said judgment of the state court. Plaintiff alleges that said proceedings in this Court was

dismissed upon a motion that challenged the jurisdiction of this Court, which dismissal was affirmed by the Circuit Court of Appeals, after which plaintiff's petition for Writ of Certiorari was denied by the Supreme Court of the United States. See Warriner v. Fink, et al., 307 F.2d 933, (5th Cir. 1962), cert denied, 372 U.S. 943 (1963).

In the instant complaint plaintiff again challenges the validity of said state court judgment, which divested her of the title to said realty.

The allegations of the instant complaint affirmatively and abundantly demonstrate that plaintiff is precluded from maintaining the instant cause because plaintiff's claim has been heretofore fully and finally adjudicated. See Barron & Holtzoff, Federal Practice and Procedure, s 279 at 171 (Rules ed. 1960).

It is therefore,

ORDERED and ADJUDGED that this complaint be and the same is hereby dismissed with prejudice.

DONE and ORDERED at Miami, Florida, this 3 day of March, 1964.

/s/ CHARLES B. FULTON

UNITED STATES DISTRICT JUDGE

(Rehearing denied, May 28, 1964, filed June 1, 1964).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
FEBRUARY 3, 1965

No. 21978

FRANCES O. WARRINER,

Appellant,

v.

HARRY FINK, ET AL.,

Appellees.

Appeal from the United States District Court
for the Southern District of Florida.

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and DYER, District Judge.

BY THE COURT:

Appellees have filed a motion to dismiss this appeal on the ground that it was not timely filed and on the further ground that it is without substance and is frivolous.

The order appealed from is a judgment dismissing appellant's complaint with prejudice on the ground of res adjudicata. Within 10 days appellant filed a motion for rehearing of the order of dismissal. Appellant contends this extended the time for the filing of notice of appeal until this motion was acted on by the trial court. Under Rule 73(b) the filing of certain motions has the effect of staying the time for filing notice of appeal. This motion, while it may be said to be somewhat similar to a motion

for a new trial, is not specifically mentioned as one of the motions having the effect of staying the finality of the judgment.

Nevertheless we do not need to pass on the question of timeliness of appeal for we are fully convinced from the history of this litigation in this court that the appeal is wholly frivolous. The appeal is accordingly DISMISSED.

(Rehearing denied, February 17, 1965)

(SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1965, Case No. 426, Misc. Petition for Writ of Certiorari, DENIED.)

BLEED THROUGH

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MONROE COUNTY.
MAY 9, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

Order, filed May 16, 1967, in Key West, Florida Before Honorable Marshall C. Wiseheart, Judge of the above styled court, at Dade County Courthouse, Miami, Florida.

Charles Gertler and William Harper, for Plaintiff.

Frances Owen Warriner, in proper person, for Defendant.

ORDER

Plaintiff's motion for partial summary judgment having duly come on to be heard before me and after hearing argument thereon and being otherwise informed in the premises, it is

ORDERED, ADJUDGED AND DECREED:

1) Plaintiff is hereby declared to be the legal and record title owner of subject property.

2) The Clerk of the Circuit Court of Monroe County of the State of Florida, is hereby ordered and directed to remove, delete and expunge from the Public Records of Monroe County, the following two (2) instruments:

a) Instrument identified as "NOTICE" filed by FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER, to whom concerned, which Notice is dated December 22nd, 1966, and filed for record December 23rd, 1966, under Clerk's File No. 144489, recorded in Official Records Book 384, Page 111.

b) Instrument identified as "WARRANTY DEED" from FRANCES O. WARRINER to FRANCES OWEN WARRINER, dated December 22nd, 1966 and filed for record December 23rd, 1966, under Clerk's File No. 144490, and recorded in Official Records Book 384, Pages 112-113.

3) The Defendant, FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER, is hereby permanently enjoined and restrained from filing and/or recording any deed, claim, interest, right or demand against the subject property or from in any way interfering with Plaintiff's possession, title, use or disposal of subject property.

DONE and ORDERED in Chambers, at Miami, Dade County, Florida, this 9th day of May, 1967.

/s/ Marshall C. Wiseheart

Judge—Circuit Court

BLEED THROUGH

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY
AUGUST 2, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

ORDER GRANTING MOTIONS TO DISMISS

THIS CAUSE having come on for hearing on the Motions of Marilyn Fernandez, a free dealer, Ralph Resnick, Sam Kay, Murray Goodman, Irving Pollack and Marcella Pollack, Beatrice L. Kohen as Executrix, Public Investment Corporation, Inc., and Harry Fink, to dismiss the Amended Counter Claim of the defendant Frances O. Warriner, and the Court having heard argument of Counsel and being duly and fully advised in the premises,

It is thereupon ORDERED and ADJUDGED that the said motions and each of them be and they are hereby granted; and it is,

Further ORDERED and ADJUDGED that said Counter Claim be and it is hereby dismissed, as to all counter defendants, with prejudice.

DONE and ORDERED at Miami, Florida this 2nd day of August, 1967.

/s/ MARSHALL C. WISEHEART

Circuit Judge

(No hearing was had on this motion.)

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY
AUGUST 2, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

ORDER

Defendant's motion for rehearing with respect to Plaintiff's motion for partial summary judgment, which this Court heretofore granted, having duly come on to be heard before me and after hearing argument thereon and being otherwise informed in the premises, it is hereby

ORDERED, ADJUDGED and DECREED

That Defendant's motion for re-hearing be and the same is hereby denied.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 2nd day of August, 1967.

/s/ Marshall C. Wiseheart
Judge—Circuit Court

(There was no hearing on this motion.)

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT
JANUARY TERM, A.D. 1968
MAY 21, 1968

NO. 67-863

FRANCES O. WARRINER, a/k/a
FRANCES OWEN WARRINER,
Appellant,

v.

MARILYN FERNANDEZ, et al.,
Appelles.

Opinion filed May 21, 1968.

An Appeal from the Circuit Court for Monroe County, Marshall C. Wiseheart, Judge.

Frances O. Warriner, in proper person.

Frank & Alexander; Charles Gertler and William Halper; Murray Goodman; Harold Kassewitz; Gary P. Eidelstein, for Appellees.

Before PEARSON, HENDRY and SWANN, JJ.

PER CURIAM

Affirmed.

(Petition for rehearing and motion for clarification of opinion, were denied August 22, 1968.)

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1969
FRIDAY, MARCH 7, 1969

NO. 37,918
District Court of Appeal, Third District, No. 67-863

FRANCES O. WARRINER, ETC.,
Petitioner,

v.

MARILYN FERNANDEZ, ETC., ET AL.,
Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional Briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A true copy

TEST:

/s/ SID J. WHITE
SID J. WHITE
Clerk Supreme Court

cc: Honorable William P. Carter
Honorable Earl R. Adams
Miss Frances O. Warriner
Honorable Gary P. Eidelstein

(Petition for Rehearing and/or Reconsideration of Court's Jurisdiction, was denied May 2, 1969.)

(SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1969, Case No. 1036 Misc. Petition for Writ of Certiorari, DENIED, January 12, 1970, Rehearing denied, March 23, 1970.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JUNE 23, 1971

NO. 70-1356-Civ-CF

FRANCES O. WARRINER, etc.,
Plaintiff,

vs.

MARSHALL C. WISEHEART, etc., et al.,
Defendants.

ORDER

This cause came before the Court upon plaintiff Frances O. Warriner's petition to proceed in forma pauperis, without prepayment of costs, fees, or security. Section 1915 of 28 U.S.C. provides in part:

> (a) Any court of the United States may authorize the commencement, prosecution, or defense of any suit, action or proceeding, civil or criminal . . . without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefore . . . .

Section 1915(d) further provides:

> (d) The court . . . may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

The plaintiff has litigated the right to title in the Monroe County land which is the subject matter of this suit in no less than five actions independent of the original 1950 foreclosure suit and appeal therefrom. This is the sixth case instituted by the plaintiff seeking to in some way void a 1950 foreclosure decree entered against her. Litigation over plaintiff's interest in this land has spanned two decades.

Apparently a foreclosure action, out of which all the subsequent actions arose, was filed in Monroe County Circuit Court in October, 1950. Harry Fink v. Frances O. Warriner, Case No. 12516 (Cir. Ct. 1950). A final decree was entered in favor of plaintiff Fink. The entry of this decree was appealed to the Florida Supreme Court by Mrs. Warriner and dismissed by that court on January 21, 1952. Thereafter, plaintiff Warriner brought two actions against Harry Fink in the Monroe County Circuit Court—one in 1952 and one in 1956. Both were dismissed, and the dismissals were upheld on appeal.

Warriner v. Fink, Case No. 12-1172 (Cir. Ct. 1952); Warriner v. Fink, Case No. 14-1187 (Cir. Ct. 1956).

Unsuccessful in state court in her attempts to regain title to the Monroe County land, plaintiff Warriner instituted an action in this Court in 1960 against Harry Fink and others. Plaintiff again sought to upset the 1950 foreclosure decree. Warriner v. Fink, Case No. 10,395-M-Civ-DD (S.D. Fla. 1960). The action was dismissed for failure to state a claim upon which relief could be granted and for lack of jurisdiction and the dismissal was affirmed on appeal. Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962), cert. denied 372 U.S. 943 (1963).

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Then, in 1963, plaintiff Warriner instituted another action against Fink in this Court, Warriner v. Fink, Case No. 63-611-Civ-CF (S.D. Fla. 1963), again challenging the validity of the 1950 state court judgment. Finding that the plaintiff's claim had been previously litigated fully and finally and that it was barred under the doctrine of res judicata, the Court dismissed the action. Plaintiff's appeal to the Fifth Circuit Court of Appeals was dismissed, in view of the litigation history of the case, as "wholly frivolous." Warriner v. Fink, Case No. 21978 (5th Cir. 1965).

A quiet title action was filed in 1967 by Marilyn Fernandez against Mrs. Warriner, seeking to remove a cloud on the land's title and to enjoin Mrs. Warriner from interfering with the title to the land by future actions. The Court entered a final order quieting the title of Marilyn Fernandez on May 19, 1967, aff'd. 213 So.2d 328 (Fla. 3rd Dist. 1968), rehearing denied, 225 So.2d 524 (Fla. 3rd Dist. 1969). Certiorari to the United States Supreme Court was denied on January 17, 1970, ___ U.S. ___ (1970).

The present suit ultimately seeks the very same thing plaintiff has sought in her prior actions—the return in some way of title to the real property in Monroe County. Plaintiff prays for the following relief in the present case:

1. That the Court declare the plaintiff the rightful owner of the realty;

2. That the Court set aside or vacate and declare null and void the 1950 final decree of foreclosure and all subsequent related judgments and expunge the same from the public records;

3. That the Court permanently enjoin defendant Fink and others from enforcing their claims to the property and interfering with plaintiff's alleged title.

The prayer reveals that this is the same lawsuit as that originally brought in the Monroe County, Florida, Circuit Court and the same as the prior two federal court actions. As was so well stated by the Fifth Circuit Court of Appeals, "in light of the anti-injunction statute, 28 U.S.C. §2283, and of a number of decisions of the Supreme Court and of this and other Circuits . . . we hold that the federal district court had no jurisdiction to enjoin the enforcement of, or to set aside, or hold null and void the decree of foreclosure entered by the Circuit Court of Monroe County." Warriner v. Fink, 307 F.2d 933, 936 (5th Cir. 1962).

The nature of this action has not changed since the first time it was filed in this Court in 1960; the same relief is sought against many of the same defendants. The recent quiet title action adds nothing and changes nothing. Litigation at some time must come to an end. Endless litigation leads to chaos and frustrates the certainty required of a stable legal system.

Out of an overabundance of caution, the Court awaited the filing of a response by each of the defendants before entering this order.

The Court takes judicial notice of plaintiff's prior actions and after careful consideration, has determined that they constitute a bar to the plaintiff's present action under the doctrines of res judicata and collateral estoppel. This case is frivolous and without merit. In accord with 28 U.S.C. §1915(d) and Brown v. Schneckl 421 F.2d 1402

BLEED THROUGH

(9th Cir. 1970); Bryant v. Craven, 415 F.2d 775 (9th Cir. 1969); Fletcher v. Young, 222 F.2d 222 (4th Cir. 1955); Urbano v. Sondern, 41 F.R.D. 355 (D. Conn. 1966), aff'd. 370 F.2d 13; Argentine v. McGinnis, 311 F.Supp. 134 (S.D. N.Y. 1969); United States ex rel Masucci v. Follette, 272 F.Supp. 563 (S.D. N.Y. 1967); Spears v. United States, 266 F.Supp. 22 (S.D. W.Va. 1967); Roberts v. Barbosa, 227 F.Supp. 20 (S.D. Cal. 1964) plaintiff's motion to proceed in forma pauperis is denied and this cause is hereby dismissed.

DONE and ORDERED at Miami, Florida, this 21 day of June, 1971.

CHARLES B. FULTON

Chief Judge

cc: Frances Warriner
U.S. Marshal
County Attorney
Mallory H. Horton, Esq.
Attorney General (P.A. Pacyna)
Max I. Ossinsky
Wakefield, Hewitt & Webster
Taylor, Brion, Buker, Hames, Green & Whitworth
Dixon, Bradford, et al
Pozen, Gold & Gold
Patton, Kanner, Nadeau, Segal & Stoes
Shutts & Bowen

(Motion for Substitution of Parties, Motion to Vacate or Set Aside Court's Order of June 21, 1971, denied, August 5, 1971 and Application for Injuction, DENIED, August 24, 1971.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 71-2847

FRANCES O. WARRINER, Etc.,
Plaintiff-Appellant,

versus

MARSHALL C. WISEHEART, etc., ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

[Filed, Nov. 10, 1971]

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's pro se application for leave to appeal in forma pauperis, filed in the above styled and numbered cause, is hereby DENIED.

IT IS FURTHER ORDERED that appellees' motions to dismiss the appeal, are hereby GRANTED.

(SUPREME COURT OF THE UNITED STATES, Case No. 72-5032, Petition for Writ of Certiorari, DENIED, October 10, 1972, on waivers of Respondents, without Briefs. Motion for leave to file Petition for rehearing, DENIED, January 8, 1973.)